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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/535,359

07/29/2005

Michel Fonfrede

00144-0233US1

6005

23973

7590

02/11/2008

DRINKER BIDDLE & REATH  
ATTN: INTELLECTUAL PROPERTY GROUP  
ONE LOGAN SQUARE  
18TH AND CHERRY STREETS  
PHILADELPHIA, PA 19103-6996

EXAMINER

SINGH, SUNIL

ART UNIT

PAPER NUMBER

3672

MAIL DATE

DELIVERY MODE

02/11/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/535,359

**Applicant(s)**

FONFREDE ET AL.

**Examiner**

Sunil Singh

**Art Unit**

3672

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10-15 and 17-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-15 and 17-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 10,12,14,15,16 are rejected under 35 U.S.C. 102(b) as being anticipated by Gorlov.

Gorlov discloses a device comprising a rotatable wheel (208,202,see Fig. 17) and a fixed part (206) located inside the rotatable, wheel. Disc (208). Blades (202).

3. Claims 10-12, 14,15,17, 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Mayo, Jr. et al. (US 5440175).

Mayo, Jr. et al. discloses a device comprising a rotatable wheel (12,14,10, see Fig. 4) and a fixed part (30) located inside the rotatable wheel. Disc (12,14). Blades (10).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mayo, Jr. et al..

Mayo, Jr. et al. discloses the invention substantially as claimed. However, Mayo, Jr. et al. support discs lack a toothed outer form. The examiner takes official notice that support discs having a toothed outer form is old and well know. It would have been considered obvious to one of ordinary skill in the art to modify Mayo, Jr. et al. to have a toothed outer form on the support discs since such a modification is a mere design choice.

6. Claims 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mayo, Jr. et al. in view of Logan

Mayo, Jr. et al. discloses the invention substantially as claimed. However, Mayo, Jr. et al. lack pivotable flaps. Logan teaches pivotable flaps (20-23). It would have been considered obvious to one of ordinary skill in the art to modify Mayo, Jr. et al. to include pivotable flaps as taught by Logan since such a modification is a mere design choice.

### ***Response to Arguments***

7. Applicant's arguments filed 11/29/07 have been fully considered but they are not persuasive. Applicant argues that Gorlov fails to teach a fixed part located inside the rotatable wheel and serving as a dam to retain a water level "for capturing the potential energy of water". It should be noted that "for capturing the potential energy of water" limitation is far more limiting than the claimed subject matter. Second of all, member (206) is capable of functioning as a dam. Dam is defined as a barrier to obstruct the flow of water. Clearly member 206 obstructs the flow of water and thus constitutes a

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dam. With regards to the argument that the specification states that "the dam function permits only a slight amount of leakage between the rotor blades and dam" is far more limiting than the claimed subject matter.

Applicant argues that part "30" of Mayo is not capable of acting as a dam. The examiner disagrees. Dam is defined as a barrier to obstruct the flow of water. Clearly member 30 can obstruct the flow of water and thus constitutes a dam. Applicant argues that member 30 spans only a minor portion of the axial length of the waterwheel. It should be noted that the claims do not preclude member 30 from being interpreted as the dam. Applicant argues there is a large space between member 32 and blades 10. However, there is no claim language precluding member 30 from being considered a dam.

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (571) 272-7051. The examiner can normally be reached on Monday through Friday 10:30 AM - 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bagnell can be reached on (571) 272-6999. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sunil Singh/  
Primary Examiner, Art Unit 3672

Sunil Singh  
Primary Examiner  
Art Unit 3672

SS

1/26/08